

**MARR HIPP
JONES & WANG**
A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

May 16, 2005

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via Hand Delivery

**Re: John A. Moffett v. SMF Systems Corporation, et al.
Civil No. CV03-00130 MLR/BMK, Trial Date: June 7, 2005**

Dear Counsel:

Enclosed is a stipulation to dismiss individual defendants Tom Caffrey and Ruby Caffrey from several counts of the Complaint filed by Plaintiff against them on the basis that individual defendants are not personally liable under Title VII (42 U.S.C. §§ 2000e et seq.) or under the False Claims Act (31 U.S.C. 3730(h)).

Virtually every federal circuit, including the Ninth Circuit, has held that individually named defendants are not personally liable under Title VII. *See Miller v. Maxwell's Int'l, Inc.*, 991 F.2d 583, 587 (9th Cir. 1993) (Title VII and ADEA claims against individual defendants properly dismissed as individual defendants are not personally liable under those statutes); *Grant v. Lone Star Co.*, 21 F.3d 649 (5th Cir. 1994); *Lissau v. Southern Food Service, Inc.*, 159 F.3d 177, 180-81 (4th Cir. 1998); *Bales v. Wal-Mart Stores, Inc.*, 143 F.3d 1103, 111 (8th Cir. 1998); *Wathen v. General Elec.*, 115 F.3d 400, 403-06 (6th Cir. 1997); *Hayes v. Williams*, 88 F.3d 898, 900-01 (10th Cir. 1996); *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313-17 (2nd Cir. 1995); *Sheridan v. E.I. DuPont de Nemours and Co.*, 100 F.3d 1061, 1077-78 (3rd Cir. 1996); *Williams v. Banning*, 72 F.3d 552, 7555 (7th Cir. 1995); *Smith v. Lomax*, 45 F.3d 402, 403-404 n.4 (11th Cir. 1995); *Grant v. Lone Star Co.*, 21 F.3d 649, 651-53 (5th Cir. 1994); *Gary v. Long*, 59 F.3d 1391, 1399 (D.C. Cir. 1995).

Moreover, federal courts have also held that there is no individual liability under the False Claims Act, *Palladino v. VNA Southern New Jersey, Inc.*, 68 F.Supp.2d 455, 464 (D.New Jersey 1999); *Orell v. UMass Memorial Med. Ctr., Inc.*, 203 F. Supp. 2d 52, 66-67 (D. Mass. 2002); *United States v. Jamieson Science and Engineering, Inc.*, 191 F. Supp. 2d 17, 19-

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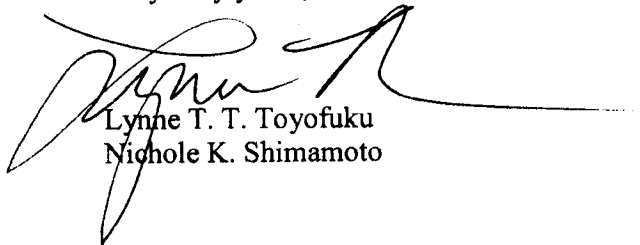
EXHIBIT 1

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22 (D.D.C. 2002); *United States v. Board of Regents of the University of California*, 165 F. Supp. 2d 1052, 1056 (N.D. Cal. 2001).

Accordingly, Defendants request that Plaintiff stipulate to the dismissal of individual defendants Tom Caffrey and Ruby Caffrey from Counts 1 (Title VII only) and 6 of the Complaint.

Very truly yours,



Lynne T. T. Toyofuku
Nichole K. Shimamoto

LTTT:NKS:lf

Enclosure

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Attorneys for Defendants
SMF SYSTEMS CORPORATION, TOM
CAFFREY AND RUBY CAFFREY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JOHN A. MOFFETT,	)	CV NO. 03-00130 MLR-BMK
)	
Plaintiff,	)	STIPULATION FOR PARTIAL
	)	DISMISSAL WITH PREJUDICE OF
vs.	)	DEFENDANTS TOM CAFFREY
	)	AND RUBY CAFFREY FROM
SMF SYSTEMS CORPORATION, A	)	COUNTS 1 (42 U.S.C. §§ 2000e et
MARYLAND CORPORATION; TOM	)	seq) AND 6, OF THE COMPLAINT
CAFFREY; RUBY CAFFREY; DOE	)	FILED BY PLAINTIFF JOHN
CORPORATIONS 1-20; DOE	)	MOFFETT ON MARCH 21, 2003
CORPORATIONS 1-20; DOE	)	AND ORDER

ENTITIES 1-20; JOHN DOES 1-20;	)	JUDGE	:	The Honorable
JANE DOES 1-20; GOVERNMENTAL)	)			Manuel L. Real
AGENCIES 1-20,)			
)			
Defendants.	)	TRIAL	:	June 7, 2005
_____)			

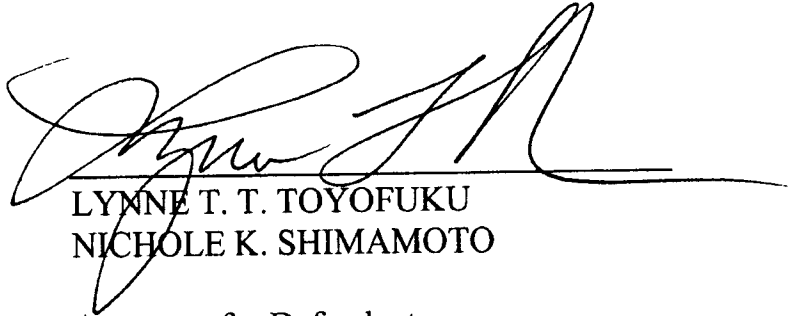
STIPULATION FOR PARTIAL DISMISSAL WITH PREJUDICE OF DEFENDANTS TOM CAFFREY AND RUBY CAFFREY FROM COUNTS 1 (42 U.S.C. §§ 2000e et seq) AND 6, OF THE COMPLAINT FILED BY PLAINTIFF JOHN MOFFETT ON MARCH 21, 2003 AND ORDER

IT IS HEREBY STIPULATED by and between all parties who have appeared in this action, by their respective counsel, that Counts 1 (42 U.S.C. §§ 2000e et seq) and 6, of the Complaint filed by Plaintiff John Moffett on March 21, 2003, are dismissed with prejudice as to Defendants TOM CAFFREY and RUBY CAFFREY.

This Stipulation is based on Rule 41(a)(1)(ii) and Rule 41(c) of the Federal Rules of Civil Procedure and has been signed by counsel for all parties who have made an appearance in this action. Trial has been set for June 7, 2005.

Each party agrees to bear his own attorneys' fees and costs.

DATED: Honolulu, Hawaii, _____.



LYNNE T. T. TOYOFUKU
NICHOLE K. SHIMAMOTO

Attorneys for Defendants
SMF SYSTEMS CORPORATION, TOM
CAFFREY AND RUBY CAFFREY

BARBARA A. PETRUS
DONNA H. KALAMA
ANNE T. HORIUCHI BELL

Attorneys for Plaintiff
JOHN A. MOFFETT

APPROVED AND SO ORDERED:

JUDGE OF THE ABOVE-ENTITLED COURT

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Moffett v. SMF Systems Corporation, et al., Civil No. CV03-00130 MLR-BMK, STIPULATION FOR PARTIAL DISMISSAL WITH PREJUDICE OF DEFENDANTS TOM CAFFREY AND RUBY CAFFREY FROM COUNTS 1 (42 U.S.C. §§ 2000e et seq) AND 6, OF THE COMPLAINT FILED BY PLAINTIFF JOHN MOFFETT ON MARCH 21, 2003 AND ORDER